MINUTES
of the
THIRD MEETING
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

July 25, 2013
Room 307, State Capitol
Santa Fe

July 26, 2013
129 Canal Street #B
Pueblo of Jemez

The third meeting of the Legislative Health and Human Services Committee (LHHS) was called to order by Representative James Roger Madalena, chair, at 9:16 a.m. on Thursday, July 25, 2013, in Room 307 of the State Capitol in Santa Fe.

Present
Rep. James Roger Madalena, Chair
Sen. Gerald Ortiz y Pino, Vice Chair
Rep. Nora Espinoza (7/25)
Sen. Gay G. Kernan (7/26)
Sen. Benny Shendo, Jr. (7/26)

Absent
Rep. Doreen Y. Gallegos
Rep. Terry H. McMillan
Sen. Mark Moores

Advisory Members
Sen. Jacob R. Candalaria
Rep. Nathan "Nate" Cote
Rep. Miguel P. Garcia (7/25)
Rep. Sandra D. Jeff
Sen. Linda M. Lopez (7/25)
Sen. Bill B. O'Neill
Rep. Paul A. Pacheco
Sen. Mary Kay Papen
Sen. Nancy Rodriguez
Rep. Edward C. Sandoval
Rep. Elizabeth "Liz" Thomson
Sen. Lisa A. Torraco

Rep. Phillip M. Archuleta
Sen. Sue Wilson Beffort
Sen. Craig W. Brandt
Rep. Stephen Easley
Sen. Daniel A. Ivey-Soto
Sen. Cisco McSorley
Sen. Sander Rue
Sen. William P. Soules

(Attendance dates are noted for those members not present for the entire meeting.)

Staff
Michael Hely, Staff Attorney, Legislative Council Service (LCS)
Shawn Mathis, Staff Attorney, LCS

Abby Wolberg, Legal Intern, LCS
Rebecca Griego, Records Officer, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, July 25

Representative Madalena welcomed everyone and asked for introductions. Senator Ortiz y Pino stressed the importance of hearing from public officials on issues that will affect New Mexicans for the next decade and said that is why the agenda has been adjusted in the way it has.

Update on the Behavioral Health Provider Investigations

Ms. Mathis provided a file to members with copies of a July 15 letter sent by the Behavioral Health Subcommittee to State Auditor Hector Balderas, asking him to investigate the Public Consulting Group, Inc., (PCG) audit. On July 17, Ms. Mathis said, a federal court in Albuquerque heard arguments on behalf of eight audited providers that are seeking injunctive relief, alleging that the state deprived them of liberty in the form of property (withheld payments). If funding is not restored, many providers will have to close their doors. Statute holds that there must be due process. The Human Services Department (HSD) has denied requests to lift pay suspensions for 12 of the 15 affected providers; one was lifted and two others were partially lifted. Ms. Mathis also provided copies of a follow-up letter to Mr. Balderas from several subcommittee members with further questions. She also provided in each file a copy of the HSD credible fraud referral guidelines.

Information that may be relevant to this audit continues to come to light, said Ms. Mathis, including a copy of a settlement agreement between the state and a company called Public Partnerships, LLC, which is an affiliate of PCG. The settlement involves repayment of alleged overpayments in funds for the Mi Via program. The agreement was signed on January 3, 2013, and the no-bid contract with PCG was signed in February 2013.

Mr. Balderas thanked members of the committee for the opportunity to review audit requirements because there seems to be some misunderstanding about the duties of his office and the agency at the point of controversy. The Office of the State Auditor is the only state agency tasked to give independent opinions. Fraud risks are always there. A $36 million liability is identified by the PCG audit, but a bigger liability involves millions of federal dollars when the state auditor is denied access to documents by an organization created and funded with federal dollars. This point has been lost in some of the debate. The state wants to catch fraud at every level and keep confidences. It is also the state auditor's job to give opinion on whether an agency is doing a good job of auditing.

Mr. Balderas summarized the federal Single Audit Act of 1984, which applies to all state or local governments that use federal money to fund programs. His office is charged to deliver statewide annual financial and compliance audits. This is not just by state mandate, he said, but also because the state cannot accept billions of federal dollars without an independent auditor who is able to do the job without interference. It is no problem to work with an organization's procedures, but when those procedures are used to deny access, all federal dollars are at risk, and not just to that specific organization.

Last year, the state auditor identified $5 million of irregularities at the HSD, Mr. Balderas said. The department could have done a better job of oversight, and it was given a finding of noncompliance pertaining to audits of providers. By law, the HSD has to have methods or criteria for identifying suspected fraud. Now, the state auditor needs to test whether the agency has done a good job in auditing that risk and exposure. The state auditor has been denied access to the report. The HSD cited the risk of public disclosure of investigation details. The secretary of human services failed to comply with a subpoena deadline of July 22 to provide that report to the state auditor, Mr. Balderas said.

Jim Ogle, co-chair of the legislative committee of the National Alliance on Mental Illness-New Mexico, offered a PowerPoint presentation to committee members titled "2013 Behavior Health Audit: A Family Member's Perspective". While acknowledging the possibility of some fraud in the system, Mr. Ogle said the immediate concern of families and consumers is whether their usual providers will be there when they show up for an appointment next week. Reported software glitches and the 100 percent failure rate for the 15 audited agencies are certainly reasons to be skeptical of the findings, which imply that the HSD and the statewide managed care behavioral health entity, OptumHealth, should be investigated to determine how the 15 nonprofits were able to pass audits last year and why now they have all failed. Mr. Ogle urged the HSD to rule immediately on lifting payment restrictions for "good cause". "The smaller providers are starting to close and hundreds of years of behavioral health experience will be walking out the doors". Mr. Ogle described strategies presented at a national dialogue on mental health in Albuquerque on July 20 for the community, for youths and for community action. The significance of the Medicaid rule change on February 2, 2011, which lowered the requirements for "reliable evidence" of credible allegations of fraud, may have been overlooked by providers, he said, but now they are paying, and that will make consumers the ultimate losers. Mr. Ogle urged legislators to work with New Mexico's congressional delegation to modify this section of law "before it destroys the country's behavioral health system".

Barri Roberts, executive director of Bernalillo County's Forensic Intervention Consortium, told committee members that any interruption of behavioral health services will interfere with the intricate and vital relationship that the entire community has created. There is going to be an increase in homelessness, in prisoners and in first-responder situations, she predicted. Regardless of whether there is fraud, what is happening is a huge break in the continuity of a system to which entire communities have contributed, she said, "and it seems like a very abrupt and unprofessional way for HSD to handle it". Ms. Roberts urged legislators to protect the

dollars spent through general appropriations and the welfare of people living with mental illness.

Attorney Robyn Hoffman, who said she has been in contact with multiple authorities in her representation of one of the audited providers, offered to share some legal information. The standard for referring a credible allegation of fraud is now so low that it is improper for the federal agency to use the word "fraud". Fraud is criminal action that has intent to commit fraud against someone, she said. What the HSD has found in its own discretion is what it found credible. Someone's credibility is discretionary, based on different opinions. Secretary of Human Services Sidonie Squier has decided that whatever evidence of fraud she has seen is credible under these very low standards, Ms. Hoffman said. "What I see is unconstitutional disruption of behavioral health and no due process in responding, and that is the basis of the federal court lawsuit which went to hearing last week", she said. There has been no notice of impropriety and none of the providers even know if there have been overpayments. All of these claims are being hidden behind a shield of criminal investigation, but this is not a criminal investigation, she said. There have been no criminal allegations. It is a significant interruption of services that will have a huge impact on homeless and prison populations, Ms. Hoffman predicted. "It is a shutdown, not a transition."

Questions/Concerns

During the discussion following presentations, committee members had numerous questions on the following topics.

More detail about the 2012 HSD audit and the HSD's denial of the PCG report to the state auditor. Mr. Balderas said that the 2012 audit of the HSD, which identified $5 million in irregularities, was a compilation of various reports over many years and that it involved an independent auditor reviewing various audit reports from the federal inspector general and agency reports. Regarding the PCG audit, Mr. Balderas said that the HSD has not responded yet to the subpoena. He has been working with the attorney general (AG) and the HSD for a larger purpose so as to avoid the courtroom, he said. The request was direct as a matter of law and practice. The state auditor has engaged with the AG to assure the protection of confidential information, and he also explained the importance of not being delayed as an auditor. Mr. Balderas denied that political posturing was involved. "I aggressively safeguard my jurisdiction", he said. At issue is whether the Office of the State Auditor could do its duty according to federal agency requirements and attest to whether the HSD has performed properly.

Al Lama, assistant AG, said that only select portions of the report — those that relate to provider conduct that is alleged to be fraudulent and subject to criminal liability — are what the AG has concerns about. With respect to the rest of the report, the AG has no fight with the auditor. The concern is what happens to that information once it is transferred to the Office of the State Auditor, as it is not a law enforcement agency, Mr. Lama said. Later in the discussion, Mr. Lama disclosed that he had just been notified that the district court judge confirmed the AG's request that the state auditor ratify confidentiality to maintain the investigative process. This allows the AG to ensure that the process is done with integrity, Mr. Lama said. "I am happy to

say we are moving forward, and the auditor will get a copy of the entire report." Mr. Lama assured committee members that the investigation is a priority in his office, and four additional criminal investigators have been assigned to it.

Confusion about who ordered suspensions in provider payments, *and why*. Questioning the reliability of OptumHealth software that revealed suspicious billing patterns by the 15 providers in 2012, a member said it is her understanding that the new computer system used by OptumHealth was untested, and she is concerned with the reliability of its data-mining process. Another member told Mr. Lama that there is great confusion and concern about who made the "credible allegations of fraud" because "this is not just an allegation, it is an execution that is putting many people out of business". Allegations of fraud are discretionary, Mr. Lama said, and they are vested within the department. Who gets to decide to pull funding? When the federal Patient Protection and Affordable Care Act (PPACA) was enacted, there was a significant change to the way Medicaid fraud investigations are to be performed. The HSD receives information, and this is documented through referral or through the managed care organization (MCO), and the HSD has the ability, and the responsibility, to investigate any suspicion of improper billing to Medicaid funding. The AG determines, through its own investigation, whether actual fraud, civil or criminal, has occurred. While there can be good-cause exceptions, that state agency's job is to decide whether pay suspensions are appropriate, he said. The AG is not authorized to be involved with this decision according to federal law. "One reason we keep asking about this is that it is almost incomprehensible that this can go on without any due process for the providers. I understand the law, but this is ludicrous.", the committee member said.

Responding to a question about the loss of qualified staff at agencies, Mr. Ogle described an investigation that took place several years ago of missing top-secret computer disks at Los Alamos National Laboratory. The investigation disrupted many peoples' lives and careers, Mr. Ogle said, and the charges eventually were proven by the Federal Bureau of Investigation to be nothing more than a clerical error. Referring to the current crisis with behavioral health care providers, Mr. Ogle said, "It's going to take a generation of people moving through this system in order to forget this.".

Where is Secretary Squier? The committee chair said that Secretary Squier had been invited to this meeting, and Ms. Mathis verified that Secretary Squier and Diana McWilliams, acting chief executive officer (CEO), Interagency Behavioral Health Purchasing Collaborative, had been invited to continue the discussion, but at that time, Ms. Mathis received an email response from Matt Kennicott, communications director, HSD, saying that, in light of how the secretary had been treated and how long the questions took, the HSD believes it has fully answered the committee's questions. The HSD declined the offer to attend today's meeting.

How will the Arizona providers be paid? Some members expressed concern about the costs of the management contracts. Others expressed outrage at the high rates (up to $300 per hour) detailed in a copy of one of the contracts. Charles Sallee, deputy director, Legislative Finance Committee (LFC), said he received an adjustment request from the HSD to move funds from

another cost category to the contractual services category to pay for the management contracts. The costs of these contracts are $7.4 million for three months of services. A total of $18 million for an anticipated six-month transition was requested by the HSD. The HSD is running a large surplus, he said, so it will have more than is needed. The HSD's position has been that using these funds will not affect services because the department is using surplus funds, Mr. Sallee said. Another member discussed the HSD's contract with OptumHealth, which requires that there be no interruption in the delivery of services. When the HSD suspended payments to the original providers, and if new providers are being paid with these transitional funds, does this not create an enormous windfall for OptumHealth?, he asked. LFC staff members said they could not answer that but would look into it.

Committee members discussed the impacts on family members and other consumers when services are disrupted. Ms. Hoffman said that an easy solution to the problem of continuity would have been for Secretary Squier to enter good-cause findings for all agencies to continue service, because of the huge numbers of consumers involved — 30,000 — during the investigation. Ms. Hoffman believes that this is an artificially created crisis. Another committee member read an excerpt from an email he received about a conversation between a New Mexico provider and the head of one of the new Arizona agencies, who said that the HSD had originally approached the agency last fall about taking over some providers in New Mexico. "The PCG audit didn't take place until February", he pointed out. Another member asked if the Arizona providers would be audited in the same manner as the New Mexico providers have been.

Public Comment

Andrea Serna, a licensed mental health counselor who works at Casa de Corazon in Espanola, told the committee that she has been hearing from families and patients who are scared and confused. The organization has been doing the best it can with downsizing.

Martha Cook told the committee that most people working in the field are driven there because of personal experience, and the passion that behind that work is huge. Local Collaborative 1 has been meeting for years, and this week, members are scared. In addition to the unknowns associated with the PPACA, now there is this crisis. "And what about the Children, Youth and Families Department? TeamBuilders serves five thousand kids in New Mexico. I challenge the committee to do something quickly."

Carter Bundy, representing state employees in the American Federation of State, County and Municipal Employees, urged the committee to consider repercussions for people who work at state agencies and the potential of safety issues with the impact of terminating services.

Ellen Pinnes of the Disability Coalition presented, on behalf of Bill Jackson, a resources information handout, which was emailed to all legislators.

Ann Hayes Eagen, represented by Ron Hale, is coordinator of the 38-member New Mexico Alliance of Health Councils. She sent a letter to Governor Susana Martinez asking that HSD

suspensions be lifted. It is unrealistic to think that what New Mexico had can be replaced by out-of-state companies, she said. There are many questions about the credibility of the audit, but it is clear that this is a systemwide failure with shared responsibility. OptumHealth, she said, has not fulfilled its contract obligations, even with as much money as has been paid to it.

Valerie Romero said she was present on behalf of children and people who come from the "wrong side of the tracks". She has experienced firsthand how the Children, Youth and Families Department fails children with behavioral health issues, and she feels that the state does not need to take services away, it needs to expand them. She said she has loyalty to the company she works for, and she has not seen any viable evidence of fraud.

Megan Grey, behavior management service program support for TeamBuilders, wanted to remind the committee that it is more than funds that are at risk — it is the poorest and most vulnerable children. Pointing to children in the room, she said, "Here is a row of kids that sat for three hours today, and not one of them misbehaved, and it's because of what we do, day in and day out.".

Bruce Evans, an advocate who has worked on mental health issues for many years, said he knows a lot of providers throughout the state, and he has seen a long, slow slide in mental health care. He believes that a lot of the fraud issues have to do with substance abuse providers, where much is subject to clinical interpretation. There has been a lack of vision and poor quality leadership, Mr. Evans said. He has worked with the executive branch before, but now some of those holding executive positions, in his opinion, are not qualified.

Julianna Koob and Linda Siegle, representing the National Association of Social Workers, which was with 800 members in New Mexico, offered the services of their members to work toward a solution. "There is no way not to have a gap in services."

New Mexico Health Insurance Exchange

Jason Sandel, vice chair, New Mexico Health Insurance Exchange (NMHIX) board of directors, and Mike Nunez, chief executive officer (CEO), NMHIX, presented an update on the work that has been done so far. (See handout.) The board has established four standing committees: 1) finance, operations and benefits; 2) information technology; 3) marketing, public relations and outreach; and 4) Native Americans. Advisory committees are being established, and meetings are being scheduled for all stakeholders. An outreach director was hired on August 7. A federal "Level One" grant was awarded to NMHIX for $18.6 million, and another grant will be requested to finance NMHIX operations through 2015. The NMHIX must become self-sufficient by January 2016. The NMHIX will make monthly progress reports to the committee. It has established good communications with the federal government, Mr. Sandel said, and has established a good flow of information.

A lengthy letter from Sovereign Hager, staff attorney for the New Mexico Center on Law and Poverty (see handout), to the chair of the NMHIX, the superintendent of insurance and the

New Mexico Health Insurance Alliance asserts that the NMHIX is not meeting federal requirements in outreach, and it claims that having Medicaid coordination handled by the HSD is inconsistent with federal law.

Questions/Concerns

Several committee members expressed concern about the separation of Medicaid enrollment to the HSD from the NMHIX. Mr. Sandel said the technology has been worked out with the HSD for communication with the federal hub. People will be referred to the HSD for Medicaid enrollment, he said. A member disagreed. "As a matter of policy, I don't want people being bumped around, and the law requires the NMHIX to do more than refer", the member said. Other questions about who has authority for enforcement were referred to Ms. Mathis and Mr. Hely.

Mr. Sandel said that the board received six project management bids for the NMHIX and that PCG was the one with health exchange experience. The Health Alliance Exchange Board made the decision to hire PCG, he said. Representative Madalena asked about the Native American liaison and whether one person could cover all of New Mexico. Mr. Sandel said the NMHIX is working to make contact with people for outreach, with a focus on rural areas. Another committee member noted PCG's lucrative, multiple contracts with the state and asked if the committee could find out how many contracts there are.

Health Insurance Regulation Update

David Barton, chief counsel, Office of Superintendent of Insurance (OSI), told the committee that there is not going to be "sticker shock" in terms of insurance prices on the exchange, and it will be beneficial to have a greatly expanded insurance pool. Lisa Reed, PPACA implementation coordinator for the OSI, said that for the individual exchange, the OSI received 59 plans from five carriers. The OSI also received stand-alone dental plans from eight different issuers. The Small Business Health Options Program, the SHOP exchange, received 57 plans from four carriers. Plans will upload to the federal platform (see handout). Pre-PPACA rates are hard to compare to post-PPACA rates, she said, because of things such as preexisting conditions, but it looks like they are right in the ballpark of what rates would be and no more than five percent higher.

Questions/Concerns

Ms. Reed was asked about catastrophic plans, of which there are only two that have passed review. The catastrophic plans have very high deductibles, and the purchaser must be under 30 years of age, she said. You could buy catastrophic coverage outside of the exchange, she added. In New Mexico, there will be navigators to help people go through the plans and see what these people are eligible for, such as Medicaid, disability or tax credit on the exchange. There still will be indigent funds at hospitals. Even with preexisting conditions, anyone is eligible for any plan. Another member asked why the state is split into five regions on the map in the handout. Ms. Reed responded that rates vary according to region, but the PPACA limits the number of geographic rating areas.

Health Disparities in New Mexico

Carlotta A. Garcia, M.D., director, Office of Health Equity, Department of Health (DOH), explained that a health disparity means differences in the incidence, prevalence, mortality and burden of disease and other health conditions that exist among specific population groups (see handout). New Mexico is a minority-majority state and has concentrated pockets of poverty, Dr. Garcia said, and one in five residents does not have health insurance. Staff members in her office facilitate cultural competency trainings and health trainings, provide translation and interpretation, conduct vaccine clinics and act as tribal liaisons for the DOH. Dr. Garcia provided a handout describing all collaborative health communities, including those in the New Mexico Office of Border Health. It is a very hard thing to be a Native American in New Mexico in regard to disparities, Dr. Garcia said, but Native Americans are accessing many programs, and her office has an annual report for the Indian Affairs Committee meeting at the end of July. Her office has done very well with a small amount of funding, she said.

Yvette Kaufman-Bell, executive director, Office on African American Affairs (OAAA), described her constituency as a minority in a minority-majority state. The latest estimate for 2012 is that 3.1 percent of New Mexico's population is African American, with one-fourth living below the federal poverty line. The OAAA's charge is to identify solutions relevant to issues concerning African Americans in New Mexico, she said. Partnering with the University of New Mexico (UNM) Center for Education Policy Research (CEPR), data were collected for the first time about challenges that affect the health and quality of life of African Americans. There are many health disparities, Ms. Kaufman-Bell said, and 69.9 percent of African Americans in New Mexico are obese. Other health issues for this group are high blood pressure, smoking, high cholesterol, diabetes, HIV/AIDS and a high infant mortality rate. The OAAA has collaborated with 23 other organizations in outreach to 11 New Mexico counties with a combined population of 11,000 African Americans.

Dr. Peter Winograd, director, CEPR, showed the committee a PowerPoint presentation of data that had been mapped by county throughout the state (see handout). New Mexico's rates for a child's chances of success are among the worst in the nation, he said, and the state has one of the highest rates of families living below the federal poverty line. This type of mapping clearly shows the effects of disparity, Dr. Winograd said.

Questions/Concerns

A committee member questioned Dr. Winograd about reasons for New Mexico's African American population having a higher infant mortality rate. Data on African Americans are minimal, and more information is needed, Dr. Winograd said, yielding to Dr. Jamal Martin from the audience. Dr. Martin is a public health scientist-practitioner who teaches family and community medicine and African studies at UNM. Data are very important, he said. With excess deaths, and smaller populations dying younger and sicker, people need to talk about inequity and what is fair and unfair, Dr. Martin said. Through this type of econometric data, the state can make better policy decisions in order to improve health quality for people. Ninety-five percent of health care dollars are spent for treatment, while only five percent go toward

prevention. Prevention is better than treatment, he said.

Community health workers could be trained in an affordable and timely manner, another member suggested. Perhaps a vacant position in the department could be reclassified as a liaison to work with Dr. Winograd and his team.

Another member asked about the issue of sickle cell anemia and African Americans. Dr. Martin responded that it is important to remember that sickle cell is a trait, not just a disease. There is a group dedicated to sickle cell research funded by the state. The member suggested bringing in a presentation to the committee from that group, the Sickle Cell Council of New Mexico.

Ms. Kaufman-Bell said that enlarged maps from Dr. Winograd's presentation will be given to committee members and are posted on the web site. A committee member reminded others that a documentary, "The House I Live In", about the war on drugs, will be shown in Albuquerque at the KiMo Theatre on August 6, and admission is free and open to the public.

Public Comment

Yolanda Cruz, a health councils and communities coordinator, urged continued partnerships with those who do the data and mapping. Health equity is when everyone has access to conditions, environment and opportunity to maintain good health and living, she said. If people do not have access to healthy food or access to safe places to play and exercise, then they cannot make the choice to live a healthier lifestyle. In advocating for the health councils and working with others, one needs to pay attention to the differences in distribution of health status, she said. The DOH does a great job as a state agency, but it does not have the resources to thoroughly evaluate local areas.

Mr. Hely made an announcement about the *border health* case, noting that the judge had denied the request for a temporary restraining order on the HSD's pay hold. Ms. Mathis said that there are very stringent procedural requirements for obtaining a temporary restraining order and what is necessary to show harm, and the court order was due to a failure to show proof rather than lack of merit.

The committee recessed at 4:52 p.m.

Friday, July 26 — Pueblo of Jemez

Representative Madalena reconvened the meeting at 9:15 a.m. in the Community Resource Center at the Pueblo of Jemez. He introduced Vincent A. Toya, Sr., governor of the Pueblo of Jemez, who welcomed members of the committee and staff and then delivered a prayer.

Governor Toya introduced Maria Clark, CEO of the Pueblo of Jemez's health center and director of the Pueblo of Jemez Health and Human Services. Governor Toya described his pride

in the clinic and in the pueblo's control of its own health services, which use Indian Health Service (IHS) programs and is currently negotiating for Department of the Interior programs. The health center offers advanced life support, and it plans to add a fitness center.

Health and Human Services Program, Tour of Jemez Clinic

Following a tour, Ms. Clark told the committee that the Pueblo of Jemez provides services to all Native Americans, but it is also looking to become a provider for non-natives along the service corridor, something that is permitted by the IHS as long as it collects full payment for services. The federal sequester has already cost the IHS $1.4 million, and funding cuts make it difficult to attract physicians and physical therapists to the area, which is just far enough from Albuquerque to make it hard to access. The clinic includes a dental center with six chairs. Ms. Clark introduced Lisa Mayes, dental clinic coordinator.

Ms. Clark conducted several PowerPoint presentations (see handouts) for the committee. One included a position statement by the tribe regarding its support for permanent legislation to prohibit mandatory enrollment of Native Americans in MCOs. In the past several years, the HSD has sought approval from the Centers for Medicare and Medicaid Services (CMS), through Section 1115 of the federal Social Security Act, to waive the federal law prohibiting mandatory enrollment of Native Americans into MCOs without any ability to opt out. The 1115 waiver request was submitted without tribal consultation, and the CMS asked the HSD to withdraw the waiver application and resubmit it after written notification to the tribes. The waiver was resubmitted without meaningful tribal input. New Mexico tribes demanded and received two different consultations with the CMS, which later upheld Native Americans' right to choose. However, still excluded are Native Americans who qualify for long-term care and are mandated to enroll in an MCO, and the ruling does not prevent the HSD from pursuing additional waivers in the future; hence the need for permanent state legislation that fully values tribal sovereignty. An addendum to the position statement declares that the HSD continues to dismiss the importance of tribal consultation in its actions and publications, with special objection to a new Centennial Care brochure stating that adults can start applying for the new Medicaid expansion category starting January 1, 2014, when, in fact, Medicaid is mandated to start taking applications on October 1, 2013. There are clear outreach and enrollment issues concerning Medicaid expansion, the position paper states, and the HSD is deliberately keeping that information low key, which is troubling.

In February 2013, Representative Madalena introduced House Bill (HB) 376 to amend the Public Assistance Act to remove Native Americans from mandatory enrollment in Medicaid managed care. Members of the committee discussed the fate of HB 376, which, despite widespread support, did not pass, and possible ways to revive it — perhaps this time through the standing House Health, Government and Indian Affairs Committee.

Ms. Clark showed another presentation (see handout) describing the Pueblo of Jemez's senior citizens program, which provides services with the highest priority to those with the greatest economic and social need through a collaborative team approach. Areas of focus are

nutrition, physical fitness, information and assistance, health screenings, home services, transportation and assistance with utilities. Ms. Clark also discussed how the pueblo has taken advantage of provisions in the federal Indian Health Care Improvement Act (IHCIA), which allows the IHS, tribes and urban Indian organizations (ITUs) more flexibility to provide many new services.

Ms. Mayes described a tribal home care program at the Pueblo of Jemez that mirrors the developmental disabilities waiver. The pueblo has not yet found a way to get reimbursement, but it is continuing to search for options. One of the features of the new IHCIA is an enhanced insurance claims collection process, whereby long-time nonpayments can be turned over to the United States Treasury, and the Internal Revenue Service will tack on fees and interest, "and we can get paid that way", Ms. Clark said. Many patients have been dropped from collections and no longer get hassled by providers for payments. The IHCIA also allows ITUs to use federal funds to see patients for whom regular insurance would be a financial burden and to pay for Medicare Part B premiums for those who cannot afford it.

Questions/Concerns

After several questions about the senior citizens program at the Pueblo of Jemez, members once again turned their attention to the issue of behavioral health providers. One advisory member recommended that the committee send a letter to the CMS on some of the issues discussed. She said she is not willing just to sit by and watch what is going on with these "hostile takeovers". The HSD seems to be ignoring things, and the behavioral health community is being ignored, she said. Another member said he was just notified that Easter Seals El Mirador had just been decertified and replaced by an Arizona company. "Things are starting to move, and we need to act quickly", he said. Another member asserted that because federal funds are involved, "we need to get our congressional leaders involved". She said she is worried that if the committee does not respond accordingly, it could jeopardize federal funds for clients. There was a consensus that a letter needs to go out, but the chair noted that there was not a quorum of committee members present. After a discussion with staff attorneys, Senator Torraco was appointed a voting member of the committee, and a quorum was announced. A motion to draft the letter was made and passed with no objections.

The need for other letters was discussed by committee members, and a motion was made to send a letter to Secretary Squier asking her to continue payments to providers under a good-cause exception while the AG's investigation is under way. The motion passed with no objections.

Medicaid Centennial Care Enrollment and Outreach

Julie Weinberg, director, Medical Assistance Division, HSD, provided a PowerPoint presentation to the committee (see handout). In February, the HSD signed contracts with the four Centennial Care MCOs: Blue Cross Blue Shield of New Mexico, Molina Health Care of New Mexico, Presbyterian Health Plan and United Health Care Community Plan of New Mexico. These entities are undergoing readiness reviews and must "go live" on January 1, 2014. All Medicaid recipients will have from October 15 to December 1, 2013 to select their MCOs, Ms.

Weinberg said. Recipients who are required to be in Centennial Care but who do not select an MCO will be assigned to an MCO. There will be a 90-day period, beginning January 1, to select a different MCO. Native American recipients are not required to be in Centennial Care but can choose to enroll, except for those who meet nursing home level of care or have both Medicare and Medicaid and are required to be in Centennial Care.

Ms. Weinberg described educational events beginning the second week in August. Advertising spots on radio and TV started running in mid-July in three waves: 1) what is Centennial Care?; 2) find out about events in your area; and 3) the time is now to make the choice about your care. These events will also include information about adult Medicaid expansion, eligibility requirements and where to apply, she said. Expansion eligibility begins on January 1, and people can apply online through YES-NM or at an integrated service delivery office, although people can choose to apply earlier, beginning October 1, she said. If applying in October, the applicant will receive a letter notifying the applicant of eligibility approval effective January 1. If the applicant does not qualify, a letter will be sent notifying the applicant of the denial and informing the person that the application was sent to the exchange for evaluation.

Questions/Concerns

Ms. Weinberg was asked about the ability of a particular MCO to provide services across the state. She said that her division is looking very closely at that, and if it is not comfortable, the entities will not be allowed to go live. They have been submitting their networks since May. MCOs have to provide directories to let participants know which doctors are in their networks, she said. The division is paying particular attention to behavioral health, as a number of MCOs have not previously been responsible for delivery of long-term or behavioral health care services, Ms. Weinberg said. The goal of Centennial Care is to combine mental and physical health services. "We want the health care delivery to consider the whole person", she said.

Asked if MCOs are approaching any of the New Mexico providers or if they are talking to the Arizona teams, Ms. Weinberg said the MCOs are holding off for the next few weeks before approaching anyone. The new contracts will have language that agencies are obligated to identify overpayments and can try to collect them, and they will have one year to identify overpayments and 15 months from the date of service to collect, she said.

Responding to criticism that the HSD has not been aggressive in outreach about Medicaid expansion, Ms. Weinberg said that the approach is going to be through education about Centennial Care and the process for enrollment. It is not going to be an aggressive outreach effort, she said, but there will be people to sign up individuals. A member asked Ms. Weinberg about the $75,000 to $80,000 budget for outreach. She said it was mostly spent on broadcasters. "These people pictured in the brochure don't look like New Mexicans", one member observed. "There's nothing in the brochure about working with community organizations."

Another member asked Ms. Weinberg what is going to happen with behavioral health care as it exists. Will the MCOs take over before Centennial Care is active? Ms. Weinberg said that,

in general, the MCO contracts with an agency, not with the clinicians directly; the clinicians contract with the agency.

A member asked about educational sessions around the state and whether a person can apply at those sessions. There will be a presumptive eligibility person at the meetings, Ms. Weinberg said. Applications cannot be submitted until October 1 because the system will not be ready to process them. The member responded, "I really hope we are not at an impasse and that we can move toward eligibility representation. I think it is important that we implement this no-wrong-door as robustly as possible.".

Ms. Weinberg provided a contact number for administrative staff: (505) 827-3106.

Health Coverage Enrollment and Outreach Roundtable

Cathleen Willging, senior scientist, Behavioral Health Research Center of the Southwest (BHRCS), began the roundtable discussion with a PowerPoint presentation (see handout). She said that the PPACA intends to maximize coverage for individuals through job-based coverage, the exchange, Medicaid and Medicare, with a welcome-mat effect; people currently eligible are finally able to access those services. Her organization has 13 members and produces a wide variety of briefs, written clearly and without jargon, highlighting research findings, presenting basic facts on timely topics and offering policy options, she said. The BHRCS has been focusing particularly on issues relating to health care, immigration and labor. The purpose of the day's roundtable was to discuss how the PPACA and expansion of Medicaid will result in improved access to health care and better health for New Mexicans. Under federal law, there must be a unified application for Medicaid and the NMHIX that is streamlined and paperless so that people can apply for Medicaid and be sent to the exchange.

Ms. Hager spoke of the importance of outreach efforts. The law requires outreach to vulnerable and underserved populations, she said, adding that while the HSD has hired additional caseworkers, there has been no outreach about Medicaid expansion. The law requires a consumer assistance program to do outreach and provide application assistance, or "guides", she said. These are navigators, in-person assisters and certified application counselors. They must be trained in Medicaid and exchange eligibility, give fair and impartial information about health plans and Medicaid, be culturally and linguistically competent and have knowledge about the needs of the community. In New Mexico, the exchange currently has no plans to do Medicaid outreach or enrollment assistance, Ms. Hager said. Challenges in outreach and assistance in New Mexico include multiple languages, different community needs and disproportionately rural populations, Ms. Hager said. While almost everyone is concerned about affordability, surveys show that about 80 percent of New Mexico say they do not know anything about the new coverage options.

Erik Lujan, policy analyst with the New Mexico Indian Council on Aging, spoke about ensuring outreach to Native American populations. There is a unique relationship between federal and tribal governments, he said, and tribal members have a unique legal and political

status based on citizenship, not race. Native Americans are exempt from requirements to acquire health insurance coverage and from cost-sharing, regardless of income, when enrolled in an exchange plan and services are received at an IHS or Tribal 638 program. Tribes can pay premiums for qualified individuals subject to terms and conditions of the exchange. Indian tribes, tribal organizations and ITUs may apply for navigator grants, provided that they meet the eligibility requirements. Funding for outreach and education comes from the Native American Community Service Center and from the Level One establishment grant.

Gabriel Sanchez, Ph.D., interim director of Robert Wood Johnson Foundation Center for Health Policy at UNM and director of Research for Latino Decisions, described a research project with Latinos in Colorado (see handout) conducted with no screen for citizenship or voter registration and in Spanish or English, at the subject's discretion. Its purpose was to discover Latinos' knowledge of the PPACA and best practices for outreach. Approximately 52 percent reported being at least somewhat informed, and 47 percent said they were not informed. Hospitals and doctors were the most trusted source of information about the PPACA. The survey indicated that 24 percent of respondents did not have any insurance coverage at all. Dr. Sanchez said the survey concluded that information about the PPACA is very low, but desire is high. Latinos reported that costs of health care are creating significant burdens on their families. The federal government and the state need to improve and increase outreach about the PPACA among Latinos, he said.

Questions/Concerns

Ms. Willging was asked by a committee member if there are any indications that there will be improvement in the state's system. She is concerned that current providers already suffer capacity issues and have not come up with strategies to absorb expansion of the insured base. If anything, there may be a reduction in capacity in terms of behavioral and mental health providers, Ms. Willging said. Primary care is an important portal, but there is a need to build capacity in the primary care arena to improve recognition and understanding of mental health issues, Ms. Willging said.

2012 Senate Memorial 57 Working Group Report on Chronic Obstructive Pulmonary Disease (COPD)

Susan Baum, M.D., M.P.H., medical director and epidemiologist, Chronic Disease Prevention and Control Bureau, DOH, described COPD as an incurable lung disease that makes it increasingly difficult to breathe over time. It was the fourth-leading cause of death in New Mexico in 2011, and cigarette smoke is the most common cause, accounting for nine out of 10 deaths. The 15 percent of COPD sufferers are people who never smoked but were exposed to workplace or secondhand smoke or to other air pollutants.

The working group had access to the most up-to-date data on the burden of COPD in New Mexico, and it reviewed results of recent COPD research conducted on a group of current and former New Mexico smokers, according to Dr. Baum (see handout).

Laura Tomedi, Ph.D., M.P.H., said that COPD has three major burden components in New Mexico: prevalence, mortality and hospitalization. Information from 2011 indicates that 97,000 people were diagnosed, and that the undiagnosed could run as high as 200,000. Risk of developing COPD increases with age, and there is a jump after age 45, when smokers start to experience lung decline. White New Mexicans have a higher risk, as do women, though this may be, in part, because they are more likely to access health care and be diagnosed, Dr. Tomedi said.

Dr. Baum referred members to the report's recommendations of effective strategies for prevention, including preventing smoking initiation, promoting smoking cessation and preventing environmental and occupational exposures that can cause or worsen COPD. Best practices for diagnosis and management of COPD include promoting smoking cessation in patients with COPD, using the most recent clinical practice guidelines in *Diagnosis and Management of Stable COPD* and adopting the most recent U.S. Preventative Services Task Force recommendations in *Screening for COPD Using Spirometry* (see page 5 of the handout). Recommendations also include increasing public awareness about COPD via a media campaign.

Questions/Concerns

In response to a question about electronic cigarettes, Dr. Baum said there is no evidence to support that e-cigarettes are less harmful. They are not approved by the federal Food and Drug Administration as a smoking cessation product, she said, but there are many products available that can triple the chance of quitting.

Dr. Tomedi pointed out that New Mexico has a grade of "F" for tobacco control advertising and funding, a "C" for tobacco tax and a "C" for cessation.

A member noted that there is a high rate of asthma at the Pueblo of Jemez and asked Dr. Baum if she could comment on what might be the reason. Asthma is a common condition, Dr. Baum said, and falls into the same category as COPD. It is complex and might be related to many things. Any particulate matter in the atmosphere for anyone with asthma or COPD can irritate that person, including dust.

Public Comment

Esperanza Dodge told committee members that she supports "no-wrong-door" access with Medicaid. She said she is scared, as her Medicaid ends in December, and she only knows about the expansion because she works at Young Women United. "Even with a master's degree, I am still confused, and most New Mexicans don't show up to events, and the jargon is difficult to understand", she said. "Let's be active and put people at ease by letting them know they can apply on October 1 instead of waiting until January 1, when there will be lots of applications", she added.

Monica Truvia said she also is involved with Young Women United, and Medicaid is important to her as a single mother, and she wants it to be easy to understand and apply for.

Christian Redbird said that people with busy lives do not have the time or the money to get help in applying. She is currently uninsured but would like to find out whether she would qualify.

Rebecca Andelasi with Kiwa Health Cooperative said that MCOs should be held accountable and be mindful that tribes do not have contracts with MCOs for reimbursement. "We ask that we can talk and be part of implementation", she said.

Evelyn Blanchard urged the committee to support passage of SB 376. Managed care does not fit well with Native American circumstances and the ways in which these people can access care, she said. Each tribe has its own way of looking at the world, and forcing it to do managed care impedes its ability to do what it needs to do.

Maureen Wakondo said she would like to see the exchange do more outreach.

Susan Loubet with New Mexico Women's Agenda commented on a joint memorial to continue the Family-Friendly Workplace Task Force that did not pass last year, and she would like a letter from the committee indicating that it would like to hear from this task force. A member made a motion to do this, and the motion passed with no objections.

Adjourn

The committee adjourned at 5:56 p.m.